

## Sexual Orientation Discrimination

Although there have been huge strides in equality in the past few years, discrimination in the workplace is far from over.

Discrimination based on sexual orientation remains a prevalent issue in many workplaces.

A study from the CIPD found that more than 40% of LGBTIQ+ staff experienced conflict in the workplace, compared to 29% of heterosexual employees. The data from this report shows harassment, abuse, and discrimination towards LGBTIQ+ individuals are still part of unwanted conduct in many businesses.

What can you do to combat such equality issues in your workplace? Certain circumstances might be difficult to spot, but the first step as an employer is to fully understand the issue.

Bear in mind that a failure to create employment equality in your business could leave you open to an employment tribunal.

In this article, we'll explore how you can stamp out an offensive environment in your workplace and better understand your employees' sexual orientation. If you need immediate support on this or any other HR issue, why not contact our award-winning team.

### **Who are LGBTIQ+ employees?**

LGBTIQ+ stands for lesbian, gay, bisexual, transgender, queer or questioning, intersex, asexual, and more. Employers should be aware that a person might have a particular sexual orientation and the Equality Act 2010 law protects all employees from both direct discrimination and indirect discrimination.

Training is key to improving the general culture of your organisation. Employers can, for example, ask an employee to declare their sexual orientation as part of equal opportunities monitoring. An employee doesn't have to give this information, but this can help avoid instances of perceived sexual orientation which impacts the LGBTIQ+ community.

## What is sexual orientation discrimination?

Context matters when it comes to each individual case of discrimination. However, the basics are the same. Sexual orientation employment discrimination is defined as an employee or colleague being treated less favourably because of their sexuality. It is also discrimination to give preferential treatment to people of a certain sexual orientation.

For example, dismissing a gay or bisexual employee for gross misconduct whilst ignoring homophobic comments from a heterosexual employee could land you in an employment tribunal for unfair dismissal.

To fully understand this, it's helpful to define what we mean by 'sexuality.' Sexual orientation is who you are sexually attracted to. For example, you could be attracted to:

- The same sex.
- The opposite sex.
- The same and the opposite sex.

These three definitions are important for legal purposes (more on this later).

However, sometimes sexual orientation isn't as clearly defined as the categories above. For example, a pansexual individual may feel attraction towards people regardless of their gender identity. Asexual individuals may have no sexual attraction to others or feel *only* romantic attraction.

Why is this important? Because victims of sexual orientation discrimination can be of any sexuality. Perpetrators too.

## What are the types of sexual orientation discrimination?

Discrimination against sexual orientation can take many forms. To avoid such discrimination you need to ensure that your business is implementing practicable steps to prevent discrimination in all forms. For clarity, these include:

### **Direct discrimination**

Direct discrimination is the most obvious, but not necessarily the most common. This is an abusive action or comment targeted at someone as a result of their sexuality.

### **Indirect discrimination**

Indirect discrimination occurs when a policy, practice, procedure, or rule applying to all employees disadvantages someone of a particular sexual orientation. A common example of this is a policy for maternity or paternity leave that's not inclusive of same-sex couples.

### **Harassment**

Harassment is any unwanted conduct that violates an individual's dignity or creates an intimidating, hostile, degrading, humiliating, or offensive environment for them.

### **Victimisation**

And finally, victimisation.

What this means is a staff member suffers a disadvantage, damage, harm, or loss as they've made a complaint about sexual orientation discrimination (or have supported/backed up a claim).

### **Effects of sexual orientation discrimination**

There are many potential issues that can arise if an employee experiences sexual orientation discrimination in the workplace. The main result is that they are more likely to have higher levels of psychological distress and health-related problems. This translates into:

- Less job satisfaction.
- Performance issues.
- Higher rates of absenteeism.
- Poor turnover rate.

Making a visible effort to tackle bias, inequality, and either indirect discrimination or direct discrimination has the opposite effect:

- Boosts work morale substantially.
- Improves company reputation.
- Has a positive impact on performance.

Discrimination can also have a devastating effect on your business.

A claim can severely damage your company's reputation, but it can also cost you thousands if it escalates to employment tribunal proceedings.

There is no limit on the compensation you have to pay out for a successful discrimination claim. In severe cases, you can be looking at £35,000 and up.

This isn't including any unpaid wages, unpaid holiday pay, notice pay, redundancy pay, and a basic award for unfair dismissal (if applicable).

So, it's also in your financial interest to avoid discrimination at all costs.

### **Sexual orientation discrimination facts**

The latest research suggests LGBTIQ+ people still face discrimination at work.

Over 20% of LGBTIQ+ workers experience discrimination during recruitment and promotion. Over a third worry about possible bias.

Around 40% of LGBTIQ+ staff feel their organisation's policies are inadequate for dealing with gender and sexual orientation discrimination.

A [2018 report of over 100,000 LGBT+ individuals](#) found that 23% had experienced a negative or mixed reaction from others in the workplace. Over 10% had experienced their sexual or gender identity being disclosed without their permission.

## Sexual orientation discrimination laws

In terms of employment law, the main piece of legislation you need to be aware of is the Equality Act 2010. While there are other laws against sexual orientation discrimination, you should always refer back to the Equality Act. This piece of legislation states that, from a legal standpoint, there are only three sexual orientations:

- Persons of the same sex (lesbian, gay).
- Persons of the opposite sex (straight).
- An emotional and/or sexual orientation towards more than one gender (bi).

It also outlines the different forms sexual orientation discrimination in the workplace can take, as highlighted above:

- Direct
- Indirect
- Harassment
- Victimisation

Finally, the law does state that there are certain instances where discrimination is allowed because of sexual orientation. For example, if the employee needs to be of a particular sexual orientation to perform their role. This is known as an occupational requirement. As a result, it doesn't technically count as discrimination.

## Examples of sexual orientation discrimination

As with other forms of discrimination, sexual orientation discrimination in the UK can take many forms. Here's an example:

*You grant an annual leave request to a man who wants to attend ante-natal appointments with his female partner.*

*You then refuse annual leave to a woman whose female partner is pregnant.*

This is an example of direct same-sex relationship discrimination.

While the above example is clearly targeted, there can be less obvious cases. In some instances, discrimination is accidental or unintentional. For example

*You want to organise a company conference after a particularly successful financial year. You arrange the event in a foreign country where homosexuality is illegal. A gay employee can't attend as a result.*

In this case, the discrimination was indirect. This is unlawful and a claim could be raised against you as a result.

### **How to stop sexual orientation discrimination**

There are a number of steps you can take:

Develop policies clearly outlining a zero-tolerance approach to discrimination, bullying and harassment of LGBT staff.

Don't just create an equality policy- actively communicate it. Ensure it's clear and that everyone is aware of it.

Implement diversity and inclusion training with all staff.

Ensure line managers are appropriately trained to deal with sexual orientation discrimination.

Recruit and promote diverse candidates. The way to do this is not to single out a candidate because of their protected characteristic. Instead, include a diverse group of candidates from the outset—this means equal opportunities for all.

Employees experiencing discrimination can find it tough to speak to an employer. It can also have a detrimental effect to their mental health.

That's why it's useful to have an Employee Assistance Programme. With an EAP in place, staff can access confidential advice from mental health experts.

### **Need further guidance?**

No business wants to get to the point where they are overseeing the unfair treatment of employees or job applicants based on sexual orientation. Discrimination plays a huge role in employment law so you must have a legitimate aim to improve equality in your organisation.

If you want assistance drafting an equality policy, running a diversity training programme, or just have an HR issue, speak to a Croner expert today on **0844 561 8133** and quote **39214**.